

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RONALD ALLEN,

Petitioner,

No. 03-CV-70306-DT

vs.

Hon. Gerald E. Rosen

THOMAS PHILLIPS,

Respondent.

\_\_\_\_\_ /

ORDER DENYING MOTION TO AMEND PETITION  
FOR WRIT OF HABEAS CORPUS, WITHOUT PREJUDICE

At a session of said Court, held in  
the U.S. Courthouse, Detroit, Michigan  
on September 27, 2005

PRESENT: Honorable Gerald E. Rosen  
United States District Judge

This matter is presently before the Court on Petitioner Ronald Allen's Motion to Amend his petition for a writ of habeas corpus to delete claim # 1 of his original petition alleging unconstitutional failure of the prosecution to disclose material evidence to the defense under *Brady v. Maryland*, 373 U.S. 83 (1963). On May 29, 2003, this Court entered an Opinion and Order summarily dismissing the petition without prejudice to Mr. Allen's right to file a motion for reinstatement of his petition within 60 days after the issuance of a final decision from the Michigan Supreme Court exhausting his *Brady* claim and any other claims not yet exhausted in the Michigan state courts. It appears, however, that Petitioner's position is that deleting claim #1 would obviate the need for

him to follow the procedures set forth in the Court's May 29, 2003 Order.<sup>1</sup> Without deciding the validity of Petitioner's position, the Court notes that Petitioner has not filed a motion for re-open his case, which would be a necessary pre-requisite to consideration of his request for leave to amend his habeas corpus petition.

For these reasons,

IT IS HEREBY ORDERED that Petitioner's Motion to Amend his petition to delete his unexhausted claim is DENIED without prejudice to Petitioner's filing of a motion to re-open his case with a showing of good cause for doing so within **14 days of the date of this order**. Failure of Petitioner to timely move to re-open his case in compliance with the foregoing will result in the entry of a final order of dismissal on the next court date.

SO ORDERED.

s/Gerald E. Rosen  
Gerald E. Rosen  
United States District Judge

Dated: September 27, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record

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<sup>1</sup> The Court is also concerned with the tardiness of Petitioner's request. He was notified by the Michigan Court of Appeals that his delayed application for leave to appeal and his motion for immediate consideration was dismissed without prejudice by the Michigan appellate court on March 19, 2004. However, he did not file the instant motion until six months later, i.e., far longer than the 60-days contemplated by the Court's May 23, 2003 Order.

on September 27, 2005, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager